

REMARKS

Upon entry of the present amendment, claims 1, 3 and 6 will have been amended. Additionally, claims 2, 4, 9 and 10 will have been canceled without prejudice or disclaimer. Finally, new dependent claim 11 will have been submitted for consideration by the Examiner.

In view of the herein-contained amendments and remarks, Applicant respectfully requests reconsideration and withdrawal of each of the outstanding rejections in the present application. Such action is respectfully requested and is now believed to be appropriate and proper.

Initially, Applicant respectfully thanks the Examiner for accepting the drawings in the present application and indicating such acceptance in the official action. Applicant further thanks the Examiner for the detailed Office Action.

Based on the amended claims, Applicant respectfully traverses each of the Examiner's outstanding rejections.

In the outstanding Official Action, the Examiner rejected claims 1, 2, 4 and 5 under 35 U.S.C. § 103 as unpatentable WOLTER (US Published Patent Application No. 2003/0129559) in view of VALENTINO (US Patent No. 5,673,802) and CARPENTER (US Patent No. 6,554,448).

Applicant respectfully traverses the above rejection and respectfully submits that WOLTER, VALENTINO and CARPENTER, in any proper combination, fail to teach or suggest the combination of features as now recited in at least Applicant's claim 1. In particular, in setting forth the rejection, the Examiner asserted that WOLTER discloses substantially all of the claimed limitations. Applicant respectfully submits that this is

incorrect. While WOLTER does disclose a base, a heating unit and a display, there is no relationship between the heat emitted by the heating unit and the message displayed by the display. Yet further, WOLTER is directed to a cake protector which is designed to rest on top of the cake but is not provided with a pin that is configured to extend into the cake and to position the base at a predetermined position on a cake. Essentially, the WOLTER device is intended to protect the upper surface of the cake from any residue or debris of the burning devices 16, 17, which can be sparklers or candles.

However, WOLTER does not show a pre-printed thermosensitive message such that heat emitted from the heating unit causes a color change of the message, such that the message is displayed.

According to the Examiner's asserted rejection, the admitted deficiency of WOLTER is disclosed by CARPENTER. However, CARPENTER merely discloses a stand-alone luminary device that is unrelated to a cake, cake protecting or to cake decorating. There is no reason whatsoever to combine the teachings of WOLTER and CARPENTER. WOLTER is directed to a cake protecting device while CARPENTER et al is directed to a stand alone luminary. Moreover, Applicant claim 1 recites the display being fixedly provided on the generally planer vertical wall of the base. As can clearly be seen in CARPENTER et al., the display is fixed on a curved holder such as the vase, or bowl. There is additionally no reason in the cited prior art for modifying the CARPENTER et al., display to conform to the recitations of Applicant's claim.

The Examiner further admits that the primary reference, WOLTER does not disclose a pin as recited. The Examiner does relies on VALENTINO for teaching such a pin. However, since WOLTER relates to a cake protector device, and clearly shows

supports 12 which do not pierce or extend into the surface or body of the cake it would not be obvious to utilize the teachings of VALENTINO in combination therewith. In other words, one of ordinary skill would not use pins such as 46 in the decorative cake protector of WOLTER. There is certainly no teaching or reason in the prior art for such modification. Furthermore it is respectfully submitted that the cake piercing pins 46 are required in the device of VALENTINO, because VALENTINO relates to a decorative candle holder which is rotated by a motor rotates and is thus relatively heavy and unstable. However, there would be no need for such pins in the cake protector of WOLTER. For this additional reason, the Examiner's proposed combination is improper.

Yet further there is no apparent reason for why the Examiner has combined selected features from a decorative cake protector with features of a display from a stand-alone luminary device that contains no teaching of the mounting same on a cake, with projecting pins from a rotatable candle holder.

In addressing the rejection of claim 3, the Examiner relied upon ZER et al. However, Applicant's claim 3 requires that the candle is adjustably positionable along the rail groove. In this regard the Examiner's attention is directed to figure 4 of the present application. Clearly neither of the four references applied by the Examiner in combination against of features of claim 3 disclose at least this feature, in the recited combination. Moreover, ZER et al., is directed to a lamp shade with a candle assembly the burning of which causes the lamp shade to rotate. Applicant's claim does not involve rotation, nor does the primary reference relied upon by the Examiner. Nor is there any reason set forth why one would utilize a candle unit from a rotatable lamp shade in a cake

protective device. There is no rotating member on the WOLTER cake protective device and accordingly there is no need to use the candle unit from ZER et al., therein.

Merely because candle holders having a plurality of wicks are known perse, provides no teaching or reason for utilizing such a candle holder in the decorative cake holder of WOLTER.

By the present response, Applicant has submitted additional claim 11 reciting additional features that are not taught or disclosed, nor are they rendered obvious by any proper combination of the references relied upon the Examiner. Accordingly, Applicant respectfully submits that each of the pending claims in the present application is now clearly patentable over the combination of references relied upon by the Examiner. An action to such effect is respectfully requested in due course.

Applicant further wishes to make a record of telephone call between Applicant's representative Enoch Peavey and the Examiner in charge of the present application. During the above noted interview, which was conducted by telephone on August 13, 2007, Applicant's representative pointed out the differences and distinctions between the references relied upon by the Examiner and the pending claims. Applicant's representative further pointed out the shortcomings of the combinations with respect to the features of Applicant's invention. In the above noted interview no agreement was reached regarding the patentability of claims in the present application. However, Applicant respectfully wishes to thank the Examiner for his courtesy and patience as exhibited in the above noted interview.

Accordingly, in view of the herein contained amendments and remarks Applicant respectfully requests reconsideration and withdrawal of each of the outstanding

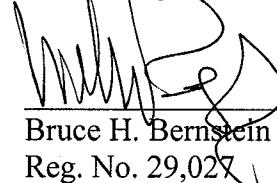
rejections, together with an indication of the allowability of all the claims pending in the present application. Such action is respectfully requested and is now believed to be appropriate and proper.

SUMMARY AND CONCLUSION

Applicant has made a sincere effort to place the present application in condition for allowance and believes that he has now done so. Applicant has amended the claims and traversed the rejections. Applicant has pointed out the shortcomings and the deficiencies of the references with respect to the claimed combination as well as the shortcomings of the combined references with respect to the recitations of Applicant's claims. Applicant has thus provided a clear evidentry basis for the patentability of the claims in the present application and respectfully requests an indication to such effect, in due course.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
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